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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

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18 AMERICAN CIVIL RIGHTS
FOUNDATION, a non-profit, public benefit
19 corporation,

20 Plaintiff,

21 v.

22 CITY OF OAKLAND, CALIFORNIA, a
political subdivision of the State of California
23 and the PORT OF OAKLAND, a public
entity,

24 Defendants.
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CASE NO. CV 07 6058 (JCS)

**NOTICE OF MOTION AND MOTION TO
DISMISS (FRCP 12(b)(6))**

Date: January 18, 2008
Time: 9:30 A.M.
Courtroom: A
Judge: Hon. Joseph C. Spero

1 TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 18, 2008 at 9:30 a.m. or as soon thereafter as the
3 matter may be heard in the above-entitled court, located at the 450 Golden Gate Avenue, 16th
4 Floor, San Francisco, California 94102, Defendants CITY OF OAKLAND and PORT OF
5 OAKLAND will move the court to dismiss the action pursuant to FRCP 12(b)(6) because
6 Plaintiff's complaint fails to state a claim upon which relief can be granted, on the following
7 grounds that:

- 8 (1) ACRF's claim against the City fails because the City has no responsibility over
9 or for the ACDBE Program that is the subject of ACRF's facial challenge;
- 10 (2) in that there is no "injury in fact" to the members of Plaintiff ACRF, ACRF
11 cannot assume associational standing on their behalf;
- 12 (3) the objected-to race conscious provisions of the program at issue are not ripe for
13 adjudication;
- 14 (4) there is no threat of imminent harm to Plaintiff ACRF or its membership so that
15 injunctive and declaratory relief is inappropriate;
- 16 (5) Plaintiff's Complaint is stale, for failure to file timely; and
- 17 (6) Plaintiff's State law claims are preempted.

18 For all of these reasons, Defendants maintain that Plaintiff fails to state a claim upon which
19 relief can be granted, so that the court should dismiss this lawsuit.

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1 The Motion will be based on this Notice of Motion and Motion, the Memorandum of
2 Points and Authorities filed herewith, and the pleadings and papers filed herein.

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4 DATED: December 7, 2007

Respectfully submitted,

5 MEYERS, NAVE, RIBACK, SILVER & WILSON

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7 By: /S/

8 Mara E. Rosales

9 Attorneys for Defendants CITY OF OAKLAND
10 and PORT OF OAKLAND

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